

## § 32.46

(f) *Resolution of matters.* Where an investigation indicates that the recipient has not complied with the requirements of the Act or this part, efforts shall be made to secure compliance through conciliation and persuasion within a reasonable time. Before the recipient or subgrantee can be found to be in compliance, it must make a specific commitment, in writing, to take corrective action to meet the requirements of the Act and this part. The commitment must indicate the precise action to be taken and dates for completion. The time period allowed should be no longer than the minimum period necessary to effect such changes. Upon approval of such commitment by the Assistant Secretary, the recipient may be considered in compliance on condition that the commitments are kept. Where the investigation indicates a violation of the Act or regulations in this part (and the matter has not been resolved by informal means), the Assistant Secretary shall afford the recipient an opportunity for a hearing in accordance with § 32.47.

(g) *Intimidatory or retaliatory acts prohibited.* The sanctions and penalties contained in this regulation may be exercised by the Assistant Secretary against any recipient or sub-grantee who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Act.

### § 32.46 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation and if the non-compliance or threatened noncompliance cannot be corrected by informal means, the Department may suspend, terminate or refuse to grant or to continue Federal financial assistance or take any other means authorized by law. Such other means may include, but are not limited to:

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(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or any assurance; and

(2) Any applicable proceeding under state or local law.

(b) *Noncompliance with the requirements of this part.* If a recipient fails or refuses to comply with a requirement imposed by or pursuant to this part, the Department may institute an administrative enforcement proceeding to compel compliance with the requirement, to seek appropriate relief, and or to terminate Federal financial assistance in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph if grants have not yet been approved or funds not yet committed to the recipient. However, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The Assistant Secretary has advised the applicant or recipient of its failure to comply and compliance has not been secured by voluntary means; and

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program or activity, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any

other means authorized by law shall be taken until:

(1) The Assistant Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51368, Aug. 26, 2003]

**§ 32.47 Hearing practice and procedure.**

(a) All hearings conducted under section 504 of the Rehabilitation Act of 1973, as amended, and the regulations in this part shall be governed by the Department of Labor's rules of practice for administrative proceedings to enforce title VI of the Civil Rights Act of 1964 contained in 29 CFR part 31.

(b) For the purposes of hearings pursuant to this part 32, references in 29 CFR part 31 to title VI of the Civil Rights Act of 1964 shall mean section 504 of the Rehabilitation Act of 1973, as amended.

(c) The Assistant Secretary from time-to-time may assign to officials of other departments or agencies of the Government or of the Department of Labor (with the consent of such department or agency) responsibilities in connection with the effectuation of the purposes of section 504 of the Act and this part (other than responsibility for final decisions as provided in § 32.46), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of section 504 and this part to similar programs or activities and in similar situations.

(d) Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Secretary.

[45 FR 66709, Oct. 7, 1980, as amended at 68 FR 51369, Aug. 26, 2003]

**Subpart E—Auxiliary Matters**

**§ 32.48 Post-termination proceedings.**

(a) An applicant or recipient adversely affected by an order suspending, terminating or refusing to grant or continue Federal financial assistance shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility, brings itself into compliance with this part and satisfies the Assistant Secretary that it will fully comply with section 504 and this part.

(b) Any applicant or recipient adversely affected by an order suspending, terminating or refusing to grant or continue Federal financial assistance may request the Assistant Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (a) of this paragraph. If the Assistant Secretary determines that those requirements have been satisfied, the applicant's or recipient's eligibility shall be restored.

(c) If the Assistant Secretary denies any such request, the applicant or recipient may submit a written request for a hearing, specifying why it believes the Assistant Secretary to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure specified in this part. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (a) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order suspending, terminating or refusing to grant or continue Federal financial assistance shall remain in effect.

**§ 32.49 Recordkeeping.**

(a) Each recipient shall maintain for a period of not less than three years records regarding complaints and actions taken thereunder, and such employment or other records as required by the Assistant Secretary or by this part and shall furnish such information in the form required by the Assistant